

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

In the Matter of )  
 )  
Amendment of the Commission's Rules ) WT Docket No. 97-81  
Regarding Multiple Address Systems )

To: The Commission

**COMMENTS OF DATA ADDRESS SYSTEMS PARTNERSHIP  
ON NOTICE OF PROPOSED RULEMAKING**

Data Address Systems Partnership ("Data Address Systems"), by its counsel, pursuant to Section 1.41 of the Commission's rules, hereby files these Comments on the proposed disposition of applications currently on file for Multiple Address Systems ("MAS"), pursuant to the Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 97-81, released by the Commission on February 27, 1997.

With respect thereto, the following is stated:

1. In 1989, the Commission allocated the 941 - 941.5 MHz band for Government and Non-Government use.<sup>1</sup> All uses of the 941-944 MHz band were to be coordinated by

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<sup>1</sup>Amendment of Parts 1, 21, 22, 74 and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and non-Government Fixed Service Usage of Frequency Bands 932-935 MHz and 941-944 MHz, General Docket No. 82-243, Second Report and Order, 4 FCC Rcd 2012 (1989).

the Interdepartmental Radio Advisory Committee and the National Telecommunications and Information Administration. On January 8, 1992, Data Address Systems submitted five applications for licenses to conduct point-to-multipoint MAS operations pursuant to the Commission's Public Notice, DA 91-1422, 6 FCC Rcd 7242 (released November 27, 1991).<sup>2</sup>

2. Data Address Systems' applications were submitted as part of a business plan to create a data and transaction point-to-multipoint system in several urban areas. This private carriage system would qualify Data Address Systems as an operator of wireless data and information services, and therefore make it eligible to hold a private operational-fixed microwave license under § 90.75 (a) (1) of the Commission's rules. In its applications, still pending before the Commission over five years later, Data Address Systems proposed a data transmission service for businesses requiring periodic status reports from remote systems. Each system included a central hub hooked to at least four (4) remote systems.

3. Master stations in the cities of Baltimore, Maryland; Philadelphia, Pennsylvania; Suffolk, Massachusetts; Nassau, New York, and Washington, D.C. were proposed. Each would transmit a data stream capable of reading the signal of a remote receiver synchronized to the timed-rate of the transmitter. Because each receiver is assigned a

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<sup>2</sup>The applications proposed MAS service for the following geographic areas, respectively: Baltimore, Maryland; Philadelphia, Pennsylvania; Suffolk, Massachusetts; Nassau, New York; and Washington, D.C. See, Data Address Systems Partnership, Applications for Station Authorization in the Private Operational Fixed Microwave Radio Service (Geographic Divisions: Maryland, Massachusetts, New York, Pennsylvania, District of Columbia) (January 8, 1992).

unique digital address, the transmissions are relatively secure. Communication takes place between remotes and the relevant master station, each remote "checking in" sequentially. All communication is initiated by the master station, and each remote station responds with a 300 bit information buffer message indicating the status of the system in operation.

4. The typical Data Address Systems contracting party would be a financial institution, a retail market, or a public transportation agency concerned with highway and road conditions. Using the Data Address Systems' technology, such a party would be able to access communications exchange systems providing physical security assessment, credit card verification, weather condition updates, or secure financial data transmission. Such customers would typically employ an MAS system in support of a private data network.

5. On August 10, 1993, Congress added Section 309(j) to the Communications Act of 1934 through the Omnibus Budget Reconciliation Act of 1993. Pub. L. No. 103-66, Title VI, § 6002 (a), 107 Stat. 312, 387 (1993) ("Budget Act").<sup>3</sup> This legislation permitted the Commission to allocate subscriber-based services through competitive bidding, i.e., auctions. Though Data Address Systems' five license applications had been on file for eight months by the time the Budget Act was enacted as law, the Commission had yet to act on any of them, or, indeed, any of the other applications received prior to the time the Congress permitted competitive processes for the allocation of electromagnetic spectrum. And even though each MAS market had been established over a decade earlier and the applications

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<sup>3</sup>See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 480-89 (1993).

for the 941 MHz band were all timely filed and still pending, the Commission effectively froze Data Address Systems' applications for another five years.

6. The Commission's current MAS NPRM explicitly requested "comment on whether existing or projected internal communications requirements of private service users justify creation of such a purely private allocation . . ." Notice of Proposed Rule Making at ¶13. The enhanced transmission capabilities of the 900 MHz band make the allocation of that band for private services imperative for business ventures such as Data Address Systems. Though microwave equipment providers have recently refined their equipment in response to the Commission's renewed focus on spectrum management and efficiency, it still remains a fundamental observation of microwave path propagation that use of the higher frequencies requires shorter and shorter path link ranges to maintain reliability.<sup>4</sup>

7. In promoting a particular use for a specified band, the Commission must compute the performance and cost tradeoff. By delaying the processing of the MAS applications of Data Address Systems and its peers, the Commission escalated the costs for the private service processors proposing use of the 941 MHz band. Now, by proposing a codification of subscriber-based service in the 900 MHz band and mandating auctions in support of those services, the Commission is asking applicants such as Data Address Systems to migrate to other, less functional bands. As subscriber-based communications threaten the more fundamental industrial-based communications, the capabilities of the

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<sup>4</sup>Jason Meyers, "Wireless workhorses; microwave radio systems", 18 Telephony 64, 65 (October 28, 1996).

remaining bands should be reserved for the private carriage needs fulfilled by the 900 MHz Band.

8. In assessing whether the processing of applications such as those filed by Data Address Systems meets the legislative guidelines enacted through the Communications Act of 1934,<sup>5</sup> the Commission—through the current NPRM—is engaged in a balancing of legal requirements. The challenge for the Commission is to decide whether it can predict future change in a market need prior to the allocation of spectrum, or, in the alternative, whether it can adopt a strategy of emphasizing equipment-defined characterizations of spectrum use (as in "microwave", or "fixed terrestrial") without requiring specificity on the actual application of the technology. In the case of MAS, the ramifications of this analysis are direct and forceful: should the Commission be seen to discern a subscriber-based service need, it can auction the spectrum under the Budget Act. Clearly, there is an institutional incentive for the Commission to predict the development of subscriber-based services, even though, in the instance of MAS applications like those of Data Address Systems, the Commission's case is weak. That the Commission is openly contemplating this redefinition of use five years after depositing the various application filing fees of 50,000 MAS applicants is most unfortunate.

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<sup>5</sup>Communications Act of 1934, 47 U.S.C. §§ 307 (b) (1996) (providing for a "fair, efficient and equitable" allocation of electromagnetic spectrum"); 306 (a), (b), (c) & (d) (1996) (providing for the allocation of radio licenses).

9. This choice between private (random selection) and subscriber-based (competitive bidding) service is fully disposed of by the Commission's legislative mandate from the United States Congress. Although no applicant is guaranteed a license or, indeed, a specified use and the system of spectrum allocation which accompanies that use, Sections 157 (a) & (b), 307 (b) and 309 of the Communications Act of 1934 all require the Commission to expeditiously wind up its rulemaking on MAS. Applicants are guaranteed administrative due process as a matter of law, and that due process also informs the fair, efficient, and equitable distribution of spectrum. Of course, economy would be well served by mitigating delay and procrastination.

10. Section 157 (a) & (b) arbitrate the conflict in the 900 MHz Band between Budget Act-preferred subscriber-based services and the earlier private networks encouraged by the Commission in 1981:<sup>6</sup>

It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such a proposal is inconsistent with the public interest.<sup>7</sup>

As stated supra, the propagation characteristics of microwave technology and the needs of

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<sup>6</sup>Amendment of the Commission's Rules to Reallocate Forty Eight 25 kHz Channels in a Certain MHz Range for Multiple Address Radio Systems; and to Establish a New Standard for Frequency Tolerance on Specific MHz Multiple Address Channels, SS Docket No. 79-18, Report and Order, 47 Fed. Reg. 6869 (January 30, 1981).

<sup>7</sup>47 U.S.C. § 157 (a) (1996).

private networks for enhanced reliability in meeting the requirements of medical, financial and public transportation customers argues successfully that the public interest requires preservation of private, non-subscriber uses in the 900 MHz spectrum range. This, in turn, justifies the Commission's continued use of the random selection processes—such as lotteries—which accompany non-subscriber based services.

11. Also, the Commission—through its Second Report and Order in 1989—initiated the process of adding point-to-multipoint services to the 900 MHz Band through the addition of an additional forty 12.5-kilohertz channels paired in the 932-932.5 MHz and 941-941.5 MHz bands. The Commission did this as the financial community was contemplating a rapid increase in its need for data transmission.<sup>8</sup> As the Communications Act contemplates change and accommodates such change through 47 U.S.C. 157 (a), the Act establishes firm obligations on the Commission for timely processing applications such as those filed by Data Address Systems.<sup>9</sup> Under the Act, the rulemaking contemplated by the current NPRM should have been completed by January 8, 1993, some four and a half years ago! Notwithstanding this, and after accepting \$7.75 million dollars in filing fees, the Commission further delayed its decisionmaking, garnering several millions of dollars more in interest accruals from the fees, and compounding the investment challenges to enterprises seeking to use the 900 MHz band. All of this is inconsistent with the mandates of 47 U.S.C. 157 (a) & (b) (1996).

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<sup>8</sup>See, Data Address Systems Partnership, Application For Station Authorization in the Private Operational Fixed Microwave Radio Service (FCC 402, December 1989) (Filed January 8, 1992).

<sup>9</sup>Twelve months. 47 U.S.C. §157 (b) (1996).

12. In addition to Section 157 (a) & (b), Sections 307 (b) and 309 (f) both argue strongly for a Commission determination in favor of 900 MHz private service users. By Section 307 (b), the Act requires the Commission to ensure "fair, equitable and efficient" allocation of spectrum between communities. Within any specific Economic Area, the Commission will find a wide-diversity of communities, each offering needs of its own. And though efficiency may argue for an allocation of spectrum which maximizes Commission profits and market earnings by preferring subscriber-based services, both fairness and equity argue for promotion of those backbone microwave activities which serve the market and the community by providing commercial and home security, financial and banking flexibility, and innovative medical services.<sup>10</sup>

13. The argument for the use of random selection under Section 309 of the Communications Act and Section 6002(e) of the Omnibus Budget Reconciliation Act of 1993 is even more direct. In the event "extraordinary circumstances requiring temporary operations in the public interest" arise,<sup>11</sup> the Commission has the power to grant Special Temporary Authority ("STA") while the pending matters are resolved. In reviewing the MAS docket, there are numerous characteristics of the current proceeding which argue for expediting processing those applications proposing private network uses. The financial and medical markets served by entities such as Data Address Systems are experiencing

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<sup>10</sup>See e.g., Jan Ziegler, "Telemedicine starts to pay off, local networks connecting health providers," 13 Medical Economics (October, 1995) at 47; "Demand-Side Report: TECO Energy and IBM Launch Pilot Demo of New Home Energy Management System", Electric Utility Week (April 27, 1995) at 1.

<sup>11</sup>See 47 U.S.C. §§ 309 (i) and (j); Budget Act, Pub. L. No. 103-66, § 6002 (e) (Special Rule), 107 Stat. 312, 397 (1993).



unprecedented growth in technology use, and they are finding the public interest in expert medical care and secure financial transactions impeded by technological barriers which private microwave systems can help overcome.<sup>12</sup>

WHEREFORE, FOR THE REASONS STATED HEREIN, Data Address Systems Partnership, respectfully requests that the Commission: (1) Proceed with the 900 MHz band allocation as originally planned, and identify the non-mutually exclusive applications still remaining among the 50,000 applications by requesting parties still in existence register within 30 days of a second Public Notice; (2) Resolve the remaining mutually exclusive applications among the private system applicants by the process of random selection permitted by the Omnibus Budget Reconciliation Act of 1993.

Respectfully submitted,

DATA ADDRESS SYSTEMS PARTNERSHIP

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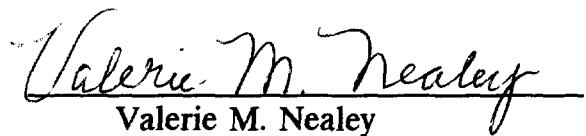
<sup>12</sup>Cf. Brian Tracey, "Banking on the 'Net: Banks Caught in Crossfire of Debate on Encryption", The American Banker, (February 17, 1997) at 6.

**CERTIFICATE OF SERVICE**

I, Valerie M. Nealey, a secretary in the law firm of Allen & Harold, P.L.C., hereby certify that I have this 21st day of April, 1997, caused to be hand-delivered, copies of the "Comments of Data Address Systems Partnership on Notice of Proposed Rulemaking" to the following:

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